

Decision 01-02-020 February 8, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Lightyear Communications, Inc. for Authority To Operate as a Provider of Facilities Based Local Exchange Telecommunications Service Within the State of California.

Application 00-10-001
(Filed October 2, 2000)

O P I N I O N

I. Summary

Lightyear Communications, Inc. (Applicant) seeks a certificate of public convenience and necessity (CPCN) under Pub. Util. Code § 1001 for authority to provide facilities-based local exchange telecommunications services as a competitive local carrier (CLC).¹ By this decision, we grant Applicant authority to operate as a facilities-based provider of local exchange services in the service territories of Pacific Bell (Pacific) and Verizon California Inc. (Verizon).

II. Regulatory Background

In Decision (D.) 95-07-054, D.95-12-056, and D.97-06-107, we established procedures to govern applications for authority to offer competitive local exchange service within the service territories of Pacific and Verizon. Applicants

¹ A CLC is a common carrier that is issued a CPCN to provide local exchange telecommunications service for a geographic area specified by such carrier.

that are granted authority to provide competitive local exchange service must comply with various rules established by the Commission, including: (1) the consumer protection rules set forth in Appendix B of D.95-07-054; (2) the rules for local exchange competition set forth in Appendix C of D.95-12-056; and (3) the customer notification and education rules adopted in D.96-04-049.

III. Overview

Applicant, a Kentucky corporation, filed its application on October 2, 2000. In its application, Applicant requests authority to operate as a facilities-based provider of local exchange services within Pacific and Verizon's service territories.

IV. Procedural Background

In Resolution ALJ 176-3048 dated October 5, 2000, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

This is an uncontested matter in which the decision grants the requested relief. Therefore, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

V. Financial Qualifications of Applicant

To be granted a CPCN for authority to provide facilities-based local exchange service, an applicant must demonstrate that it has \$100,000 of cash or cash equivalent to meet the firm's start-up expenses. The applicant must also demonstrate that it has sufficient additional resources to cover all deposits

required by other telecommunications carriers in order to provide service in California.²

Applicant represents that it will not be required to make deposits with other telecommunications carriers in order to provide the proposed service. In addition, Applicant provided a guarantee by its parent company, Lightyear Holdings, Inc., that satisfies the financial requirements.

VI. Technical Qualifications of Applicant

To be granted a CPCN for authority to provide local exchange service, an applicant must make a reasonable showing of technical expertise in telecommunications or a related business. Applicant supplied biographical information on its management that demonstrates that it has sufficient business expertise and training to operate as a telecommunications carrier.

Applicant represents that no one associated with or employed by Applicant as an affiliate, officer, director, partner, or owner of more than 10% of Applicant was previously associated with nondominant interexchange carrier (NDIEC) that filed for bankruptcy or went out of business, or was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order, except as follows.

Applicant received a complaint filed with the Georgia Public Service Commission (GPSC) alleging that it failed to provide toll-free calling for certain interLATA intercounty calls, as required. The GPSC held a hearing and subsequently adopted Applicant's stipulation to, among other things, issue a

² The financial standards for certification to operate as a CLC are set forth in D.95-12-056, Appendix C, Rule 4.B.

credit to all affected Georgia customers and pay a \$10,000 penalty. The GPSC closed the docket by an order dated July 18, 2000.

In 1997, Applicant, then known as UniDial Communications, Inc., purchased Metracom Corporation (Metracom). Prior to the purchase, Metracom had been sanctioned by the Vermont Public Service Board (VPSB) for providing local service without authority. Pursuant to a stipulation entered into by Metracom and the VPSB dated March 18, 1998, Metracom was to be on probation for two years and to refund and/or credit all revenues earned by Metracom from Vermont customers back to the customers. The customers have received their refunds and/or credits and the probation period has passed. The VPSB subsequently approved Metracom's application to provide toll and local service in Vermont.

By D.94-02-009 and D.94-12-037, Applicant was granted a CPCN to provide interexchange telecommunications services. By D.97-03-036, Applicant was authorized to resell local exchange services (U-5359-C).

There are no current actions pending against Applicant in California. Therefore, we are satisfied that Applicant has corrected its past mistakes.

We find that Applicant has met our requirement that it possesses adequate technical expertise to operate as a CLC.

Commission staff also reviewed Applicant's draft tariffs for compliance with Commission rules and regulations. The deficiencies are noted in Attachment B of this decision. In its compliance tariff filing, Applicant is directed to correct these deficiencies as a condition of our granting approval of the tariffs.

VII. California Environmental Quality Act (CEQA)

CEQA requires the Commission as the designated lead agency to assess the potential environmental impact of a project in order that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible. Since Applicant states that it will not be constructing any facilities for the purpose of providing local exchange services, except for equipment to be installed in existing buildings or structures, it can be seen with certainty that there is no possibility that granting this application will have an adverse impact upon the environment. Applicant must file for additional authority before it can construct other facilities.

VIII. Request for Confidentiality

Applicant requests that the financial information filed with this application be filed under seal. The financial information consists of the consolidated financial statements of its parent company, Lightyear Holdings, Inc. formerly known as UniDial Holdings, Inc., and a statement of Applicant's financial capability. Applicant represents that the information is proprietary and sensitive. The information, if revealed, would place Applicant at an unfair business disadvantage. We have granted similar requests in the past and will do so here.

IX. Conclusion

We conclude that the application conforms to our rules for certification as a CLC. Accordingly, we shall grant Applicant a CPCN to provide local exchange service in the service territories of Pacific and Verizon subject to compliance with the terms and conditions set forth herein. Applicant will not be authorized to construct any facilities other than equipment to be installed in existing buildings

or structures. It must file for additional authorization to construct any other facilities.

Findings of Fact

1. A notice of the filing of the application appeared in the Daily Calendar on October 3, 2000.

2. By D.97-06-107, all interexchange carriers (IECs) and CLCs are no longer required to comply with General Order 96-A, subsections III.G(1) and (2), and Commission Rule of Practice and Procedure 18(b).

3. By D.95-07-054, D.95-12-056, D.95-12-057, and D.96-02-072, the Commission authorized CLCs meeting specified criteria to provide facilities-based local exchange services beginning January 1, 1996, and resold local exchange services beginning March 31, 1996.

4. There were no protests to this application.

5. A hearing is not required.

6. In prior decisions, the Commission authorized competition in providing local exchange telecommunications services within the service territories of Pacific and Verizon.

7. Applicant has a minimum of \$100,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.

8. Applicant has sufficient additional cash or cash equivalent to cover any deposits that may be required by other telecommunications carriers in order to provide the proposed service.

9. Applicant's management possesses sufficient expertise to provide local exchange services to the public.

10. As part of its application, Applicant submitted a draft of its initial tariff that contained the deficiencies identified in Attachment B to this decision.

Except for these deficiencies, Applicant's draft tariffs complied with the requirements established by the Commission.

11. Applicant does not propose to construct any facilities in order to provide local exchange services, other than equipment to be installed in existing buildings or structures.

12. By D.95-12-057, as modified by D.97-01-015, CLCs are exempted from the requirements of Pub. Util. Code § 851 for the transfer or encumbrance of property whenever such transfer or encumbrance serves to secure debt.

13. Applicant requests that the financial information filed with the application be kept under seal.

14. Public disclosure of the financial information would place Applicant at an unfair business disadvantage.

Conclusions of Law

1. Applicant has the financial ability to provide the proposed service.

2. Applicant has made a reasonable showing of technical expertise in telecommunications.

3. Public convenience and necessity require the competitive local exchange services to be offered by Applicant, subject to the terms and conditions set forth herein.

4. Applicant is subject to:

a. The current 0.80% surcharge, changing to 1.45% effective July 1, 2001, applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the Universal Lifeline Telephone Service (Pub. Util. Code § 879; Resolution T-16366, December 2, 1999; Resolution T-16435, December 21, 2000);

b. The current 0.00% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as

- modified by D.95-02-050, to fund the California Relay Service and Communications Devices Fund (Pub. Util. Code § 2881; D.98-12-073 and Resolution T-16487, December 21, 2000);
- c. The user fee provided in Pub. Util. Code §§ 431-435, which is 0.11% of gross intrastate revenue for the 2000-2001 fiscal year (Resolution M-4800);
 - d. The current surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-A (Pub. Util. Code § 739.30; D.96-10-066, pp. 3-4, App. B, Rule 1.C; set by Resolution T-16380 at 0.0% for 2000, January 20, 2000);
 - e. The current 2.6% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-B (D.96-10-066, p. 191, App. B, Rule 6.F., Resolution T-16365 December 2, 1999; Resolution T-16430, September 21, 2000); and
 - f. The current 0.185% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Teleconnect Fund (D.96-10-066, p. 88, App. B, Rule 8.G; set Resolution T-16437, September 21, 2000).
5. The application should be granted to the extent set forth below.
 6. Applicant, once granted a CPCN to operate as a CLC, should be subject to the Commission's rules and regulations regarding the operations of CLCs as set forth in D.95-07-054, D.95-12-056, and other Commission decisions.
 7. Any CLC that does not comply with our rules for local exchange competition adopted in Rulemaking (R.) 95-04-043 shall be subject to sanctions including, but not limited to, revocation of its CLC certificate.
 8. Since Applicant does not propose to construct any facilities in order to provide local exchange services, other than equipment to be installed in existing

buildings or structures, it can be seen with certainty that granting Applicant authority to provide local exchange services will not have a significant adverse effect upon the environment.

9. Because of the public interest in competitive local exchange services, the following order should be effective immediately.

10. Applicant's request to file its financial information under seal should be granted for two years.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity (CPCN) is granted to Lightyear Communications, Inc. (Applicant) to provide facilities-based local exchange services in the service territories of Pacific Bell and Verizon California Inc. subject to the terms and conditions set forth below.

2. Applicant shall file a written acceptance of the certificate granted in this proceeding.

3. Applicant is authorized to file with this Commission tariff schedules for the provision of competitive local exchange services. Applicant may not offer competitive local exchange services until tariffs are on file. Applicant's initial filing shall be made in accordance with General Order (GO) 96-A, excluding Sections IV, V, and VI and shall correct the deficiencies noted in Attachment B. The tariff shall be effective not less than one day after tariff approval by the Commission's Telecommunications Division. Applicant shall comply with the provisions in its tariffs.

4. Applicant is a competitive local exchange carrier (CLC). The effectiveness of its future CLC tariffs is subject to the schedules set forth in Appendix C, Section 4.E of Decision (D.) 95-12-056:

“E. CLCs shall be subject to the following tariff and contract filing, revision and service pricing standards:

- “(1) Uniform rate reductions for existing tariff services shall become effective on five (5) working days’ notice.
- “(2) Uniform major rate increases for existing tariff services shall become effective on thirty (30) days’ notice to the Commission, and shall require bill inserts, or first class mail notice to customers at least 30 days in advance of the pending rate increase.
- “(3) Uniform minor rate increases, as defined in D.90-11-029, shall become effective on not less than (5) working days’ notice to the Commission. Customer notification is not required for such minor rate increases.
- “(4) Advice letter filings for new services and for all other types of tariff revisions, except changes in text not affecting rates or relocations of text in the tariff schedules, shall become effective on forty (40) days’ notice.
- “(5) Advice letter filings revising the text or location of text material which do not result in an increase in any rate or charge shall become effective on not less than five (5) days’ notice to the Commission.”
- “(6) Contracts shall be subject to GO 96-A rules for NDIECS, except interconnection contracts.
- “(7) CLCs shall file tariffs in accordance with PU Code § 876.”

5. Applicant may deviate from the following provisions of GO 96-A:
(a) paragraph II.C.(1)(b), which requires consecutive sheet numbering and

prohibits the reuse of sheet numbers; and (b) paragraph II.C.(4), which requires that “a separate sheet or series of sheets should be used for each rule.” Tariff filings incorporating these deviations shall be subject to the approval of the Commission’s Telecommunications Division. Tariff filings shall reflect all fees and surcharges to which Applicant is subject, as reflected in Conclusion of Law 4.

6. Applicant shall file as part of its initial tariff, after the effective date of this order and consistent with Ordering Paragraph 3, a service area map.

7. Prior to initiating service, Applicant shall provide the Commission’s Consumer Services Division with Applicant’s designated contact person(s) for purposes of resolving consumer complaints and the corresponding telephone number. This information shall be updated if the name or telephone number changes, or at least annually.

8. Applicant shall notify this Commission in writing of the date that local exchange service is first rendered to the public. This notice shall be provided no later than five days after local exchange service first begins.

9. Applicant shall keep its books and records in accordance with the Generally Accepted Accounting Principles.

10. In the event Applicant’s books and records are required for inspection by the Commission or its staff, Applicant shall either produce such records at the Commission’s offices or reimburse the Commission for the reasonable costs incurred in having Commission staff travel to Applicant’s office.

11. Applicant shall file an annual report, in compliance with GO 104-A, on a calendar-year basis using the information request form developed by Commission staff contained in Attachment A to this decision.

12. Applicant shall ensure that its employees comply with the provisions of Public Utilities (Pub. Util.) Code § 2889.5 regarding solicitation of customers.

13. The certificate granted and the authority to render service under the rates, charges, and rules authorized herein will expire if not exercised within 12 months after the effective date of this order.

14. The corporate identification number assigned to Applicant is U-5359-C which shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

15. Within 60 days of the effective date of this order, Applicant shall comply with Pub. Util. Code § 708, Employee Identification Cards, and notify the Director of the Telecommunications Division in writing of its compliance.

16. If Applicant is 90 days or more late in filing an annual report or in remitting the fees listed in Conclusion of Law 4, the Commission's Telecommunications Division shall prepare for Commission consideration a resolution that revokes Applicant's CPCN, unless Applicant has received the written permission of the Commission's Telecommunications Division to file or remit late.

17. Applicant shall comply with all applicable rules adopted in the Local Exchange Competition proceeding (R.95-04-043/I.95-04-044) as well as all other applicable Commission rules, decisions, GOs, and statutes that pertain to California public utilities, subject to the exemptions granted in this decision.

18. Applicant is not authorized to construct facilities, except for equipment to be installed in existing buildings or structures, and shall file an application to amend its CPCN in order to do any additional construction.

19. Applicant's request to have the financial information filed with this application kept under seal is granted for two years from the effective date of this

decision. During that period the information shall not be made accessible or disclosed to anyone other than the Commission staff except on the further order or ruling of the Commission, the Assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge.

20. If Applicant believes that further protection of the information kept under seal is needed, it may file a motion stating the justification for further withholding of the information from public inspection, or for such other relief as the Commission rules may then provide. This motion shall be filed no later than one month before the expiration date.

21. The application is granted, as set forth above.

22. This proceeding is closed.

This order is effective today.

Dated February 8, 2001, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners

TO: ALL COMPETITIVE LOCAL CARRIERS

Article 5 of the Public Utilities Code grants authority to the California Public Utilities Commission to require all public utilities doing business in California to file reports as specified by the Commission on the utilities' California operations.

A specific annual report form has not yet been prescribed for California Competitive Local Carriers. However, you are hereby directed to submit an original and two copies of the information requested in Attachment A no later than March 31st of the year following the calendar year for which the annual report is submitted.

Address your report to:

California Public Utilities Commission
Financial Reports, Room 3251
505 Van Ness Avenue
San Francisco, CA 94102-3298

Failure to file this information on time may result in a penalty as provided for in §§ 2107 and 2108 of the Public Utilities Code.

If you have any question concerning this matter, please call (415) 703-1961.

ATTACHMENT A

Information Requested of California Interexchange Telephone Utilities and Competitive Local Carriers.

To be filed with the California Public Utilities Commission, 505 Van Ness Avenue, Room 3251, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted.

1. Exact legal name and U # of reporting utility.
2. Address.
3. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
4. Name and title of the officer having custody of the general books of account and the address of the office where such books are kept.
5. Type of organization (e.g., corporation, partnership, sole proprietorship, etc.).

If incorporated, specify:

- a. Date of filing articles of incorporation with the Secretary of State.
- b. State in which incorporated.
6. Commission decision number granting operating authority and the date of that decision.
7. Date operations were begun.
8. Description of other business activities in which the utility is engaged.
9. A list of all affiliated companies and their relationship to the utility. State if affiliate is a:
 - a. Regulated public utility.
 - b. Publicly held corporation.
10. Balance sheet as of December 31st of the year for which information is submitted.
11. Income statement for California operations for the calendar year for which information is submitted.

(END OF ATTACHMENT A)

ATTACHMENT B

List of deficiencies in tariff filed by Lightyear Communications, Inc. in A.00-10-001 to be corrected in its tariff compliance filing

1. Sheet 6: The tariff must be available for inspection in a California office.
2. Sheet 22: Include the following rates for ULTS in the tariff:

Flat Rate	\$5.34
Measured Rate	2.85
3. Sheet 44, Rule 5A: State in the tariff that the CLC cannot require advance payments for usage.
4. Sheet 50, Rule 8G: Customers have up to 3 years to initiate a dispute over charges or to receive credits, not 2 years. Refer to Pub. Util. Code Section 736.
5. Sheet 51, Rule 10A(2): The CLC needs to state in the tariff that the “Due by” date shall be no sooner than 15 days of the date of presentation. Refer to Rule 8B from Appendix B of D.95-07-054.
6. Sheet 64, Rule 20: Remove Sections F, H(7), H(9), H(10), H(11), I, J, K, L, and M from Rule 20. The CLC needs to concur with Pacific Bell or Verizon’s Limitation of Liability tariffs as appended to D.95-12-057.

(END OF ATTACHMENT B)